

**REMARKS**

This amendment is responsive to the prematurely final Office Action of October 28, 2009. Reconsideration and allowance of claims 3, 4, 12, 14, 16-18, 20-22, and 24-28 are requested.

**The Office Action**

Claims 2-6, 12, 14-22, and 24-28 stand rejected under 35 U.S.C. § 103 as being unpatentable over Seely (US 2003/0117296) as modified by Balakirev (WO 93/18706).

Claim 5 stands rejected under 35 U.S.C. § 112, second paragraph.

**The Present Amendment  
Should Be Entered**

The Finality of the Office Action is premature, because the Examiner issued a new ground of rejection which was not necessitated by the applicant's amendment of June 29, 2009.

Specifically, Amendment D of June 29, 2009 made no substantive amendment to independent claim 15 or claims 14, 16-19, 25, or 26 dependent therefrom. The only "amendment" to claim 15 was the correction of a typographical error, particularly the deletion of a stray punctuation mark in a location which was grammatically incorrect and whose removal did not alter the meaning of claim 15. Nonetheless, the Examiner issued a new ground of rejection against claim 15 and claims 14, 16-19, 25, and 26 dependent therefrom.

Because claim 15 and claims 14, 16-19, 25, and 26 were not substantively amended, the Examiner's citation of a new reference and issuance of a new ground of rejection was not necessitated by the "amendment" of claim 15 in the Amendment D of June 29, 2009. Accordingly, it is submitted that the finality of the Office Action of October 28, 2009 is premature and should be withdrawn.

The applicant hereby requests withdrawal of the Finality of the October 28, 2009 Office Action and entry of the present amendment.

**35 U.S.C. § 112**

Claim 20 has been placed in independent form including all of the subject matter of its parent claim 5. Care has been taken to resolve the alleged indefiniteness of claim 5 as it was incorporated into claim 20. Accordingly, it is submitted that claim 20 and the claims dependent therefrom now comply fully with the requirements of 35 U.S.C. § 112.

**WO 93/18706**

The copy of WO 93/18706 provided by the Examiner is in Russian and no translation has been provided. The Examiner alludes to an English-translation of the abstract and the Figures. However, the technical description set forth in the abstract is too brief to ascertain exactly what Balakirev is doing and disclosing.

Moreover, the abstract is so brief that it is impossible to determine whether Balakirev provides an enabling disclosure of that which is set forth in the abstract.

Accordingly, the applicant requests that the Examiner either provide a full translation of Balakirev or withdraw the reference.

**The Claims Distinguish Patentably  
Over the References of Record**

Claim 12 calls for controlling the display device to the cumulative curve superimposed on the histogram. The Examiner's complete rejection of claim 12 reads "the limitation of claim 12 has been addressed in figure 5 of Seely, '502, figures 5 and 6". Contrary to the Examiner's assertions, Figures 5 and 6 of Seely do not show a display of a cumulative curve superimposed on a histogram. Accordingly, it is submitted that claim 12 and claim 24 dependent therefrom distinguish patentably and unobviously over the references of record.

Claim 20 calls for displaying the histogram with the cumulative curve superimposed, the histogram and the cumulative curve having common axes. The Examiner asserts that Seely provides the user with various display options. However, none of the display options noted by the Examiner teach or fairly suggest displaying a histogram with a cumulative curve superimposed and with the histogram and the cumulative curve having common axes and common scales. Accordingly, it is

submitted that claim 20 distinguishes patentably and unobviously over the references of record.

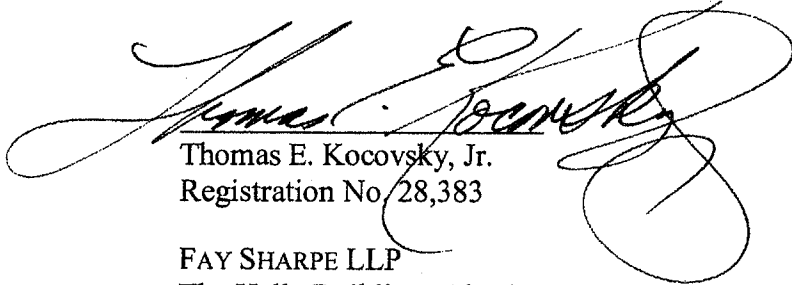
Claim 28 calls for a display device controlled to display the cumulative curve superimposed on the histogram as the medical measurement data is received. The Examiner's complete rejection of claim 28 states "The limitation of claims 26-28 is addressed in Seely figure 5 and 6." Figures 5 and 6 of Seely, contrary to the Examiner's assertion, do not disclose or teach displaying a cumulative curve superimposed on histogram data as the medical measurement data is received. Accordingly, it is submitted that claim 28 distinguishes patentably and unobviously over the references of record.

### CONCLUSION

For the reasons set forth above, it is submitted that claims 3, 4, 12, 14, 16-18, 20-22, and 24-28 distinguish patentably and unobviously over the references of record and meet the other statutory requirements. An early allowance of all claims is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, the Examiner is requested to telephone Thomas Kocovsky at 216.363.9000.

Respectfully submitted,



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